

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

THE PONCA TRIBE OF INDIANS	)	
OF OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case Number CIV-05-445-C
	)	
CONTINENTAL CARBON	)	
COMPANY, et al.,	)	
	)	
Defendants/Third Party Plaintiffs,	)	
	)	
vs.	)	
	)	
CONOCOPHILLIPS, a Corporation,	)	
	)	
Third Party Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

Plaintiffs filed a motion in limine seeking exclusion of a variety of evidence. First, Plaintiffs request that Defendants be prohibited from pre-highlighting exhibits that are to be used with their own witnesses on direct examination. This request is denied. Pre-highlighting exhibits is a useful practice that helps to organize and expedite testimony, and it will be permitted during trial.

Second, Plaintiffs request that Defendants be prohibited from introducing photographs taken by their experts of trash at Plaintiffs' homes or the poor condition of these homes. Plaintiffs assert that such photographs were taken in violation of an agreement between counsel. Regardless of any agreement, photographs of Plaintiffs' homes are directly relevant to their claims in this case, and Defendants will be permitted

to introduce such evidence at trial to the extent that it is not cumulative or unduly time-consuming. This request is therefore denied.

Third, Plaintiffs request that Defendants be prohibited from introducing photographs and videos created after the close of discovery. The Court notes that, in connection with a motion for summary judgment, Continental Carbon submitted information indicating that all parties, by agreement, had continued to conduct discovery beyond the court-imposed deadline of May 31, 2008. This request is therefore denied.

Fourth, Plaintiffs request Defendants be prohibited from asking Mr. Arkeketa or others about whether the trappings of certain class members' poverty constitutes a violation of the Ponca Tribe's spiritual code. This request is denied. If Plaintiffs raise the issue of poverty, then Defendants can cross-examine witnesses on this topic.

Fifth, Plaintiffs request that Defendants be prohibited from advancing testimony about "darkening agents" other than that consistent with their own expert, Dr. Rook, in relation to the industrial sources of soot and the causes of the soot in the Property Class Area. This request is denied. At trial, the parties will be permitted to introduce evidence relevant to what types of materials caused the darkening of Plaintiffs' lands.

Finally, Plaintiffs request that Defendants be prohibited from introducing testimony to the firing of Tony Arkeketa by the Ponca Tax Commission. Continental Carbon states that it does not intend to offer such evidence at trial, and therefore this request is moot.

Accordingly, Plaintiffs' Motion in Limine (Dkt. No. 565) is DENIED.

IT IS SO ORDERED this 5th day of February, 2009.



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ROBIN J. CAUTHRON  
United States District Judge